

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4946 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RAMILABEN GIRISHBHAI PATEL

Versus

DISTRICT MAGISTRATE

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Appearance:

MR PK JANI for Petitioner

MR. H.L. JANI, AGP, for Respondent No. 1, 2, 4

MR. B.T. RAO, ADDL. CENTRAL GOVT. STANDING COUNSEL  
for respondent No. 3

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 24/09/98

ORAL JUDGEMENT

By way of this petition under Article 226 of the Constitution of India the petitioner has challenged the order of detention dated 31.5.1998 passed by the District Magistrate, Patan, in exercise of powers conferred under sub-section (2) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as 'the

Act'). The petitioner has challenged the order of detention on various grounds. It is contended by Mr. Jani, learned counsel for the petitioner that on 10.6.1998 the State Government approved the order of detention dated 31.5.1998. The petitioner made representation on 18.6.1998 which was received by the Central Government on 23.6.1998. On the same date by issuing a telegram comments were invited from the State of Gujarat. The State Government did not act on the telegram promptly and after seven days i.e. on 30.6.1998 called for parawise reports from the detaining authority, namely, the District Magistrate, Patan. The detaining authority received the telegram on 1.7.1998 but sent the comments as late as on 7.7.1998. It is contended by the learned counsel that the delay of seven days during the period 23.6.1998 to 30.6.1998 by not acting on the telegram and further delay of six days during the period 1.7.1998 to 7.7.1998 is fatal in view of the decisions of the apex court in the case of HARISH PAHWA VS. STATE OF U.P. reported in AIR 1981 SC 1126 and KUNDANBHAI DULABHAI SHAIKH VS. DISTRICT MAGISTRATE, AHMEDABAD reported in 1996(2) SUPREME TODAY 33.

On the other hand learned A.G.P. Mr. H.L.Jani submits that the delay is not fatal in the present case as there is proper explanation of the same. He relies on a decision of the apex court in the case of SMT. KAMLABAI VS. COMMISSIONER OF POLICE, NAGPUR AND ORS. reported in JT 1993(2) S.C. 666.

I have considered the rival contentions. It is not in dispute that by telegram dated 23.7.1998 the Central Government called for comments from State Government on the representation filed by the petitioner and the State Government called for the comments from the detaining authority on 30.6.1998. In this regard Mr. P.D. Shah, Under Secretary to Government of Gujarat, Food, Civil Supplies and Consumer Affairs Department has filed an affidavit. He has said in para 4 with respect to the decision of the State Government on the representation. He has however not said anything with respect to the comments invited from the State Government by the Central Government. Another affidavit has been filed by Mr. L.N.S. Mukundan, Chief Secretary to the Government of Gujarat dated 15.9.1998. At this stage it is clarified that this court by order dated 2.9.1998 asked the Chief Secretary, State of Gujarat as well as the Secretary in the Department of Consumer Affairs, to file affidavit. In fact the purpose of this court in asking the said officers to file the affidavit was to streamline the process of deciding the representation so

that the detenu may not have grievance of not deciding the representation in time. It was not the purpose to call upon the Chief Secretary to the State Government or the Secretary in the Department of Consumer Affairs to say in the individual case. Be that as it may Mr. Mukundan in his affidavit has stated that the telegram of the Central Government dated 23.6.1998 by which the Central Government demanded parawise comments from the State Government made by the wife of detenu was received by the State Government on 24.6.1998. However, the said representation was not received along with telegram dated 23.6.1998. The representation was sent along with post copy of telegram which was received by Special Branch of Food, Civil Supplies and Consumer Affairs on 29.6.1998. It is further stated that another telegram of the Central Government dated 25.6.1998 by which parawise comments on the representation dated 18.6.1998 made by the detenu were demanded by the Central Government. The said telegram was received by the State Government on 29.6.1998. Thus, according to the Chief Secretary, Mr. Mukundan the representations sent by the Central Government calling for prawaise remarks were received on 29.6.1998. The very next day i.e. on 30.6.1998 the grounds were called for from the detaining authority. Thus, on the strength of this it is contended by the learned A.G.P. that there is no delay at the instance of the State Government in calling for the comments from the detaining authority.

Mr. Jani learned counsel for the petitioner submits that it was not necessary for the State Government to wait for the copy of the representation as it was exactly the copy of the representation dated 18.6.1998 submitted by the wife of the detenu. In my opinion there is no substance in the say of Mr. Jani as without seeking the representation it was not possible to say whether it was the same representation or not. So far as the delay during the period 1.7.1998 to 7.7.1998 is concerned, an affidavit has been filed by Shri Himanshu Sheth, District Magistrate, Patan. It is stated that the representation dated 18.6.1998 was received in his office on 1.7.1998 which was sent by the Food, Civil Supplies and Consumer Affairs Department, State of Gujarat. It is further stated that after preparing the detailed remarks of the representation, the same was sent to the Government of Gujarat on 7.7.1998. The District Magistrate has not at all explained as to why he took seven days in preparing the parawise comments. There is no explanation by the Collector, Patan worth the name in delay in preparing parawise remarks. In my view this has caused unreasonable delay in deciding the representation

invalidating the detention.

In view of the aforesaid, this Special Civil Application is allowed. The impugned order of detention dated 31.5.1998 is quashed and set aside. The detenu shall be set at liberty forthwith if not required in any other case. It is stated by the learned counsel that the detenu Girishbhai Joitaram Patel is detained in District Jail, Junagadh. Therefore, writ be sent to the jail authority of the said jail.

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